



**AFP**  
AUSTRALIAN FEDERAL POLICE

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Angelene Falk  
Australian Information Commissioner and Privacy Commissioner  
By email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

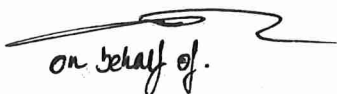
Dear Ms Falk

**Discussion paper on the disclosure of public servants' names and contact details**

Thank you for the opportunity to contribute to the OAIC's consideration of policy with respect to the disclosure of public servant's names and contact details in documents requested under the *Freedom of Information Act 1982* (Cth).

I attach the AFP's submission in response to the discussion paper.

Yours sincerely



on behalf of.

Alison Macdonald  
Manager Legal

## Submission to the Office of the Australian Information Commissioner on the disclosure of public servant's names and contact details

Thank you for the opportunity to contribute to the OAIC's consideration of policy with respect to the disclosure of public servant's names and contact details in documents requested under the *Freedom of Information Act 1982* (Cth).

### *Submissions made by the Australian Public Service Commission*

The AFP supports the submissions made by the APSC in response to the discussion paper. In particular, the AFP supports the points made by the APSC in relation to the changing nature of government records and the dissemination of records under FOI; privacy considerations along with the stress and anxiety the release of names may cause public servants; and the limited public interest served by the release of names and contact details having regard to other accountability measures in place for agencies.

### *Current approach to the names of AFP employees in FOI documents*

AFP employees are generally aware of the likelihood of documents on which they have worked being susceptible to release under FOI legislation, but this issue is not specifically addressed in the employee induction program.

The AFP currently advises applicants in its acknowledgement correspondence that it will exclude as irrelevant the names of AFP employees other than Senior Executive employees and the direct telephone numbers, signatures and mobile telephone numbers unless the applicant objects.

The AFP also treats the names and contact details of internal staff members who have printed or been involved in emailing documents for the purpose of collating them for the request as irrelevant, given these names do not form part of the original content of the documents.

Where the documents contain names of AFP members involved in internal welfare, complaint and dispute resolution processes or professional standards investigations, the AFP generally exempts employee names together with other personal information under s 47F or s 47E(c) of the Act. This is consistent with the approach taken under paragraph 6.157 of the Guidelines, and has been consistently upheld by the Information Commissioner and the AAT.<sup>1</sup>

The AFP may also exempt AFP employees' names under s 47F where a case may be made for special circumstances under paragraph 6.154 of the Guidelines, or under s 37(1)(c) where there is a specific risk to an employee. An email from a staff member setting out reasonable concerns is usually sufficient for consideration of an exemption in these circumstances.

<sup>1</sup> See for example, *'HJ' and the Australian Federal Police* [2015] AICmr 71, *'HX' and the Australian Federal Police* [2016] AICmr 1, *Paul Farrell and the Australian Federal Police* [2017] AICmr 113, *Elstone Pty Limited and Civil Aviation Safety Authority* [2018] AICmr 52, *'PC' and Australian Taxation Office* [2018] AICmr 53, *Richard Rudd and Civil Aviation Safety Authority* [2018] AICmr 56 and *De Tarle and Australian Securities and Investments Commission* [2016] AATA 230.

It is likely that the redaction of staff names adds to the time it takes to mark-up documents which are the subject of a request. However, the AFP considers this an appropriate step to take to ensure the safety, welfare and privacy of its staff members.

*Concerns about releasing names and contact details of staff in response to FOI requests*

The AFP supports the points made by the APSC in its submission in relation to the need for a changed approach to the exemption of the names and contact details of public servants, in particular, the ability to use s 47F to exempt the names of public servants on privacy grounds.

The AFP is also concerned that the limited grounds for exempting employee names and contact details recognised in the guidelines do not recognise the security risks posed to operational law enforcement officers and employees of law enforcement agencies more generally. The AFP submits that in this context, in addition to the use of s 47F, there is also a basis for the wider use of s 47E(c) in relation to the names of its employees.

The expectation that the names and contact details of public servants engaged in their normal functions will be released under FOI is not consistent with the steps that the AFP recommends that its employees take to limit their exposure to potential risks.

While the Act authorises the exemption of documents and parts of documents where the release of documents could endanger the life or physical safety of any person, the guidelines indicate that this exemption requires “a reasonable apprehension of danger which will turn on the facts of each particular case”.

The cases cited in the guidelines support a position that this exemption is directed to individual apprehended threats. However, there is no exemption readily available to address an increased threat level to all employees of a particular organisation or address potential risks associated with publication.

Police officers involved in operational activities are inherently at risk of harm as a result of their role in the community. In addition, the AFP submits that the current security environment poses a heightened threat to both operational and non-operational employees of the AFP. Since September 2014, when the national security threat level was raised to probable, law enforcement officers have been a particular target of Islamic State inspired attack planning in Australia<sup>2</sup>.

As discussed in the APSC submission, applicants are not limited in the use which they may make of documents provided to them under FOI, and may, if they so choose, post documents online. Alternatively, an applicant may use an online forum like Right to Know to make an application, which results in documents automatically appearing online.

The release of names and contact details of AFP employees online presents risk to both operational and non-operational employees of the AFP. Online publication makes it easier for those who wish to harm a law enforcement employee to identify them and their place of work, to also use the

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<sup>2</sup> For example, the September 2014 attack on two police officers in Endeavour Hills, Victoria, resulting in the death of Numan Haider (see Finding — Inquest into the Death of Ahmad Numan Haider available at [www.coronerscourt.vic.gov.au](http://www.coronerscourt.vic.gov.au)); a conspiracy to attack government buildings, including AFP headquarters in Sydney in November-December 2014 (see *R v Sulayman Khalid*; *R v Jibryl Almaouie*; *R v IM*; *R v Mohamed Rashad Al Maouie*; *R v Farhad Said* [2017] NSWSC 1365); a planned ANZAC day attack in Melbourne in 2015 which involved driving a car at a police officer and then beheading him (see *DPP (Cth) v Besim* [2017] VSCA 158 (23 June 2017)), and the shooting of NSW Police employee Curtis Cheng outside the NSW Police Headquarters in Parramatta, NSW in October 2015 (see *R v Alou* (No 4) [2018] NSWSC 221 (1 March 2018)).



information to identify them on social media and other internet platforms, and potentially approach them in the community.

In the context of counter-terrorism, the role of online propaganda and messaging applications in the radicalisation of perpetrators over the last 5 years has been well documented. In cases prosecuted in Australia, offenders have regularly conducted internet searches to support and formulate plans to carry out attacks. The AFP submits that the publication of the names of its officers in this environment represents a significant risk.

The AFP is conscious of the security risk that having its employees identified in an online environment poses. To address risks of this kind, the AFP recommends its employees limit their visible online presence identifying themselves as employees of the organisation and that in other social and business interactions outside the workplace they do not readily identify themselves as employees of the AFP.

The AFP also has a focus on the physical safety of its members. As a result of the current threat environment, the AFP has received Commonwealth funding for the purposes of enhancing the physical security of its personnel. Projects include significant building works to upgrade the security of AFP buildings, deploying officers to guard the entrances of AFP premises and upgrading personal protective equipment supplied to operational members to reduce the harm of attacks.

The AFP briefs all staff to exercise care and vigilance when approaching or leaving their work building. The AFP also has measures in place to address potential attacks on the workplace of which all staff members are notified and in which all receive training.

Notwithstanding personal choices that employees may make to identify themselves online or not to adopt all measures recommended by the AFP to protect their personal safety, the AFP considers that members should be confident that the AFP is taking all possible steps to protect their safety in the course of their work, including ensuring that their identity as AFP employees is not disclosed without good reason. The AFP considers this part of its obligations with respect to the management of its personnel, and submits that the use of the exemption under s 47E(c) could address these concerns.

The AFP acknowledges that the names of some of its employees are required to be disclosed in criminal prosecutions in accordance with prosecution disclosure obligations. Members may also be publicly identified as a result of media reporting of a prosecution. However, documents released in this context are provided only to the parties and not to the world at large, and members will generally look to control the release of their contact information in this context.

The AFP considers that does not lessen its obligations in relation to protect the personal safety of its members. The AFP submits that in these cases the use of s 47F would allow it to assess whether it would be reasonable in the circumstances to release a particular AFP employee's name in documents associated with the case. Alternatively, the public interest factors with respect to s 47F and s 47E(c) would allow for consideration of these issues.

The AFP submits that the expectation that the names and contact details of AFP staff members will be released is inconsistent with measures it is currently taking as an organisation to protect its staff members. The AFP submits that the ability to use s 47F or s 47E(c) of the Act in relation to the names and contact details of its employees would address these concerns.

*Public interest factors*

The AFP considers that the public interest in promoting better-informed decision making and increasing scrutiny and review of its activities can still be readily achieved without the names and contact details of individual staff members being released under FOI.

Information released in AFP documents under FOI is on most occasions sufficient to indicate what activities the AFP has undertaken and what decisions were taken during the course of those activities. Releasing the names of those involved does not significantly enhance the level of scrutiny of AFP activities that may be undertaken by relevant bodies and members of the community.

The AFP is subject to a comprehensive range of measures designed to ensure the integrity and accountability of both its operations and employees. Accountability measures to which the AFP is currently subject include: parliamentary oversight in the context of Senate Estimates and parliamentary committees; judicial oversight and scrutiny of investigative actions during the prosecution process; judicial review of administrative decisions; oversight by the Commonwealth Ombudsman of various investigative powers; and oversight by the Independent National Security Legislation Monitor and the Inspector General of Intelligence Services in respect of its national security and intelligence work. AFP employees are also subject to internal professional standards investigations and external oversight by the Australian Commission for Law Enforcement Integrity. With respect to members of the public wishing to make a complaint, the AFP has publically available contact details.

The AFP submits that media, public and parliamentary scrutiny of activities is not restricted by the names of employees not being released. To take a recent example, media and parliamentary scrutiny and public debate in relation to the execution of two search warrants by the AFP on the premises of the ABC and a News Corporation journalist in June 2019 has not focussed on the identity of individual members of the AFP involved in the operations. Instead, it is the actions of the AFP in undertaking the warrants, and broader legal and policy considerations in relation to the investigation of journalists which have been the subject of media and public scrutiny.

Generally, where AFP activities are under media, public or parliamentary scrutiny, members of the AFP's senior executive will be responsible for responding, and consistent with this, the AFP generally releases the names of its senior executive in documents. The AFP supports the submissions of the APSC that there are good reasons for drawing a distinction between release of the names of SES employees and other employees of the organisation in relation to the release of names and contact details under FOI.

The senior executive service of the AFP is a separately appointed cohort, employed under different terms and conditions to AFP employees, and takes a role of greater responsibility within the organisation. For example, following the warrants referred to above, the Acting Commissioner held a press conference and senior executive members of the AFP will also likely be questioned on the operations at Senate Estimates hearings later this year.

With respect to the release of contact details of AFP members in particular, the AFP submits that there is little to be gained in terms of increasing scrutiny of AFP activities by releasing this information. Where a person wishes to contact or complain about an AFP employee there are phone numbers and email addresses available to members of the public to make that contact. The unrestricted release of this information under FOI would, however, expose employees to the risk of their contact details being published online and the risk of subsequent exposure to harassing contact or other harm.



*Current guidance in the guidelines*

With respect to the current guidance in the FOI guidelines on the issue of exemption of names and contact details, the AFP considers the guidance could be updated and consolidated to address the issue thematically rather than commentary being addressed to particular sections of the Act.

In particular, it would be useful to consolidate guidance in relation to excluding this information as irrelevant by agreement and the use of s 22 in this context, the use of exemption under s 47E(c) in relation to employee welfare, complaint and internal investigation processes and the use of s 47F in relation to personal information.

It would also be of assistance if the issue of the release of contact details, as opposed to names, could be separately addressed, as it appears that more recent decisions have considered these issues separately, rather than together with the release of the names as contemplated by the guidelines.

As noted above, AFP employees are generally aware of the likelihood of documents on which they have worked being susceptible to release under FOI legislation. However, comprehensive guidance on this issue from the OAIC would assist with communicating with employees on this issue.